Supreme Court, U.S.
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No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

VERONICE A. HOLT

Petitioner,

v.

ARVIE J. LEE

Respondent,

Petition for Writ of Certiorari
To the District Court of Appeal, First District,
of the State of Florida

PETITION FOR WRIT OF CERTIORARI

VERONICE A. HOLT
Counsel of Record
Attorney for Petitioner
Suite W919
3003 Van Ness NW
Washington, D.C. 20001
(202) 244-2659

QUESTIONS PRESENTED

Petitioner's father, Lloyd Holt, a World War II veteran was hospitalized, diagnosed as schizophrenic (an incurable mental illness) adjudicated insane and involuntarily committed by the Probate Court for Wayne County, Michigan to the care and custody of the Department of Veterans Affairs. In 1959, Wayne County Probate Court issued Letters of Guardianship appointing a fiduciary as guardian for Lloyd Holt who was mentally incompetent. After a nearly twenty year institutionalization, he remained in the care and treatment of the Veterans Affairs until his death on May 16, 1991. He remained under guardianship until the date of his death.

In probate proceedings, the State of Florida refused to give effect to the Michigan adjudications and admitted a will of Lloyd Holt to probate. Petitioner now seeks a writ of certiorari to present two important federal questions.

I. WHETHER THE FAILURE OF THE COURTS OF THE STATE OF FLORIDA TO GIVE THE MICHIGAN ADJUDICATIONS OF INSANITY AND GUARDIANSHIP THE SAME EFFECT THAT THEY WOULD HAVE IN MICHIGAN IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNTIED STATES CONSTITUTION.

II. WHETHER THE COURTS OF THE STATE OF FLORIDA HAVE DENIED TO THE PETITIONER AS GUARANTEED BY ARTICLE IV OF THE UNITED STATES CONSTITUTION THE SAME PRIVILEGES AND IMMUNITIES AS IT GRANTS TO CITIZENS OF FLORIDA IN PROCEEDINGS IN ITS COURTS

LIST OF PARTIES

The names of the parties to the proceedings in the Courts whose judgment is sought to be reviewed here appear in the caption of the case. The real party in interest in the proceedings below is Arvie J. Lee. Petitioner Veronice A. Holt brought an action against Arvie J. Lee to revoke a will made by Petitioner's father, Lloyd E. Holt, a mentally incompetent person. Petitioner's sisters, Patricia Gardner and Valerie Holt, joined in the proceedings in the Probate Court for Duval County, State of Florida. The interest of Patricia Gardner and Valerie Holt are co-extensive with the interest of Petitioner, Veronice A. Holt. None of the parties listed have either parent or subsidiary companies. The Department of Veterans Affairs (formerly the Veterans Administration) was an interested party in the proceedings in Wayne County Probate Court, but not in the Florida proceedings, the subject of this petition.

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES iii

TABLE OF AUTHORITIES vi

APPENDICES x

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS 2

STATEMENT OF THE CASE 4
A. Historical Background 5
B. The Michigan Estate 6
C. The Florida Probate Proceedings 7
D. The Opinions Below 10

REASONS FOR GRANTING THE PETITION . 13
1. *Full Faith and Credit* 13
2. *Privileges and Immunities* 15

I. THE FAILURE OF THE COURTS OF THE STATE OF FLORIDA TO GIVE THE MICHIGAN ADJUDICATIONS OF INSANITY AND

GUARDIANSHIP THE SAME EFFECT THAT THEY WOULD HAVE IN MICHIGAN IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION 17

II. THE COURTS OF THE STATE OF FLORIDA HAVE DENIED TO THE PETITIONER AS GUARANTEED BY ARTICLE IV OF THE UNITED STATES CONSTITUTION THE SAME PRIVILEGES AND IMMUNITIES AS IT GRANTS TO THE CITIZENS OF FLORIDA IN PROCEEDINGS IN ITS COURTS. . . 19

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Acacia Mut. Life Ins. Co. v. Jago, 273 N.W. 599 (Mich. 1937) 17

Aldrich v. Aldrich, 378 U.S. 540 (1963) 14

Alexander v. Callahan's Estate, 132 So.2d 42 (Fla. 3d DCA 1961) 14

Barber v. Barber, 323 U.S. 77 (1944). 13

Barron v. Florida Freedom Newspapers, 531 So.2d 113, 116 (Fla. 1988) 16

Building Trades & Construction Trades Counsel of Camden County v. Mayor and City Council of Camden, 465 U.S. 208 (1984). 15

Caldwell v. Estate of McDowell, 507 So.2d 607 (Fla. 1987) 12

Davis v. Davis, 305 U.S. 32 (1938) 14

Durfee v. Duke, 375 U.S. 106 (1963). 14

Florida League of Cities v. Smith, 607 So.2d 397 (1992) 12

Heath v. Becktell, 327 So.2d 3 (Fla.1976) 12

Holland v. Wainwright, 499 So.2d 21 (Fla. 1st DCA, 1986) 12

Horace v. Culver, 111 So.2d 670 (Fla.1959). . . . 14

Johnson v. Muelberger, 340 U.S. 581 (1951). . . . 18

Magill v. Brown, 16 Fed. Cas. 408 (1883) 16

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943) 14

May v. Leneair, 297 N.W. 2D 599 (Mich. App. 1980) 17

Morris v. Jones, 329 U.S. 545 (1946). 13

Nash v. Florida Industrial Commission. 389 U.S. 235 (1967) 12

North Carolina v. Williams, 325 U.S. 226 (1945) 14

Order of Travelers v. Wolf, 331 U.S. 586 (1947). . 14

Paul v. Virginia, 8 Wall 168, 180-81 (1868). . . . 16

Pino v. District Court of Appeal for the Third District, 604 S.2d 1233 (Fla. 1992) 12

Sovereign v. Bolin, 305 U.S. 66 (1939). 14

Sutton v. Leib, 342 U.S. 402 (1952) 13

Titus v. Wallick, 306 U.S. 282, 291 (1939) 13

Toomer v. Witsell, 334 U.S. 385 (1948) 15

Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 78 (1920) 16

Williams v. North Carolina, 317 U.S. 287 (1942) 13, 14

United States Constitution and Statutes Cited

Article IV . . . . . *passim*

28. U.S.C § 1257 . . . . . 1, 11, fn. 5

28 U.S.C. §1738 . . . . . .2, 14

Florida Statutes § 394.4672 . . . . . 3, 12, 16 16

Florida Statutes § 744.103 . . . . . 3, 12

Other Authorities

1959 U.S. Code Cong. and Adm. News 2048 . 4, fn.1

Books and Periodicals

Gerald Cogan and Robert Craig Waters, ***The Operation of the Florida Supreme Court***, 18 Nova.L.Rev.1151 (1994) Reprinted by the Supreme Court of Florida. 55-58.12, fn.6

Note: State Parochialism, and the Right to Travel and the Privileges and Immunities Clause of Article IV, 41 Stanford Law Rev. 1557 (1989) 19

APPENDICES

Appendix A: Final Order of the Probate Court of Duval County dated September 7, 1996 . . . . . App.1-5

Appendix B: Opinion of the First District Court of Appeal Affirming Final Order of Probate Court of Duval County. App.6

Appendix C: Order of the Court denying Motion for Reconsideration, Rehearing and/or Clarification and for Rehearing *En banc* App.7

Appendix D: Memorandum denying Petition for Review App.8

Appendix E: Memorandum denying Petition for Writ of Mandamus App.9

Appendix F: Memorandum denying Motion to Reconsider Denial of Petition for Writ of Mandamus App.10

I

Veronice A. Holt respectfully petitions this Court for a writ of certiorari to review the District Court of Appeal, First District, of the State of Florida.

OPINIONS BELOW

The opinion of the Probate Court for Duval County, Florida, *see* Appendix ("App. A) is not reported. The Opinions of the First District Court of Appeal, affirming the Probate Court and denying rehearing (App. B and C) are reported at 681 So.2d 282 (Fla. 1st DCA, 1996).

The opinion of the Supreme Court of Florida denying jurisdiction (App. D) is reported at 684 So.2d 282 (Fla. 1996). The decisions of the Supreme Court of Florida denying the Petition for Mandamus and denying the request for rehearing on the Petition for Mandamus are unreported. (App. E. and F)

JURISDICTION

The First District Court of Appeal entered its opinion affirming the probate court on September 12, 1996 and denying rehearing on October 24, 1996. On November 20, 1996, the Supreme Court of Florida entered its judgment dismissing the Petition for Review for lack of discretionary jurisdiction. Petitioner Holt sought further review by Writ of Mandamus. On December 30, 1996, and February 19, 1997, respectively the Supreme Court of Florida entered its orders denying review and denying rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article IV of the United States Constitution, provides in relevant part:

> Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
>
> Section 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

28 U.S.C. § 1738 provides that, with respect to the authenticated acts, records and judicial proceedings of any State, that:

> Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possession as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Florida Statutes specifically provide full faith and credit to judgments or orders of other states placing a person with the Department of Veterans Affairs.

394.4672 PROCEDURE FOR PLACEMENT OF VETERAN WITH FEDERAL AGENCY ---

(2) The judgment or order of placement by a court of competent jurisdiction of another state or of the District of Columbia, **placing a person with the United States Department of Veterans Affairs or other agency of the United States Government for care or treatment, shall have the same force and effect as to the person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order**; and the courts of the placing state or of the District of Columbia shall be deemed to have retained jurisdiction of the person so placed. Consent is hereby given to the application of the law of the placing state or district in respect to the authority of the chief officer of any facility of the United States Department of Veterans Affairs or of any institution operated in this state by any other agency of the United States to retain custody or to transfer, parole, or discharge the person.

744.103 GUARDIANS OF INCAPACITATED WORLD WAR VETERANS ---

The provisions of this law shall extend to incapacitated world war veterans, provided for in

chapters 293 and 294 or any amendment or revisions of them.

38 U.S.C. 5502(d) provides in pertinent part:

In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts.[1]

STATEMENT OF THE CASE

Petitioner respectfully suggests that this case presents questions worthy of certiorari. First this petition requests that this Court in its position as the arbiter of the Full Faith and Credit clause require the State of Florida to grant full faith and credit to the Michigan Court's

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[1] The express purpose of this statute is to prevent the inheritance of gratuitous benefits for incompetent veterans by persons other than a surviving spouse, children or dependent parents. ***1959 U.S. Code Cong. and Adm. News 2048***

adjudications of insanity and guardianship. Secondly, this petition requests this Court require the State of Florida to grant to residents of other states the same privileges and immunities in appearing before its courts that it grants to its own citizens.

A. Historical Background

On February 7, 1944, Lloyd Holt was discharged from the United States army as unfit for service because of psychoneurosis, anxiety type, severe. Following his discharge from service, Lloyd E. Holt married Veronice Greene. Three children were born of their union; Petitioner, Veronice A. Holt, her twin sister, Valerie Ann Holt and Patricia Holt Gardner. Shortly after the birth of the twins in 1949, Lloyd Holt was involuntarily detained, diagnosed as schizophrenic, adjudicated insane, and involuntarily committed by the Probate Court for Wayne County, Michigan to a Veteran's Hospital in the State of Michigan where he remained until July 1, 1968 at which time he was released to outpatient care and treatment. The Department of Veterans Affairs transferred supervision of Lloyd Holt to Jacksonville, Florida where he remained in the care and treatment of the Department of Veterans Affairs until the date of his death on May 16, 1991.

Following entry of a decree of divorce for Veronice Greene, on July 20, 1959, Wayne County Probate Court granted the petition of the Serviceman's Bureau pursuant to the Uniform Veterans Guardianship Act for the appointment of a guardian for Lloyd Holt who was

"mentally incompetent to have the care, custody and management of his estate; that he has been graded incompetent on examination by said Bureau", and issued Letters of Guardianship. His three daughters, Veronice, Valerie and Patricia were named his presumptive heirs.

At all times from November 26, 1959 until the date of his death, May 16, 1991, Lloyd Hdt, remained under court appointed guardianship in the Probate Court in Wayne County, Michigan. Further, at all times from 1949 until his death in 1991, Lloyd Holt was rated mentally incompetent by the Department of Veterans Affairs. Lloyd Holt was neither restored to sanity or mental competency; nor did he ever seek restoration to sanity. At the time of Lloyd Holt's death, nearly $300,000 in savings and investments from his benefits under Title 38 of the United States Code had accrued in the Michigan guardianship account.

B. The Michigan Estate

On June 17, 1991, a county public administrator appointed by the State of Michigan opened an estate in Wayne County Probate Court and received letters of Administration as the Temporary Personal Representative of the Estate of Lloyd Holt. Subsequently, Veronice A. Holt, Petitioner herein, appeared in the Wayne County Probate Proceedings and on November 5, 1991 was appointed Successor Temporary Representative in the probate proceedings in Wayne County.

Arvie Lee as the personal representative appointed by the State of Florida (discussed below) objected to the jurisdiction of the State of Michigan. The Probate Court in Michigan determined that Lloyd Holt was domiciled in the State of Florida and that its jurisdiction was ancillary. The Court of Appeals for the State of Michigan affirmed.

C. The Florida Probate Proceedings

On August 14, 1991, Arvie J. Lee, a nephew of Lloyd Holt, filed a Petition for Administration in the Circuit Court for Duval County, Probate Division, stating that he was the only known beneficiary of the estate and the only person having an interest in the estate. Arvie Lee was appointed Personal Administrator and a will of Lloyd Holt's dated January 17, 1989 and presented by Arvie Lee was admitted to probate (self proved) in Duval County.

In Duval County, Petitioner herein, Veronice A. Holt, filed a PETITION FOR REVOCATION OF PROBATE REMOVAL OF A PERSONAL REPRESENTATIVE AND DETERMINATION OF INVALIDITY OF WILL, requesting the Court, among other things:

(4) to declare the last Will and Testament of Lloyd E. Holt dated January 17, 1989 as propounded by Arvie

J. Lee invalid pursuant to Sections 731.201 (19),[2] 732.501, 732.5165, Florida Statutes, specifically, that at the time of the making of the Will, Lloyd E. Holt was mentally incompetent and lacked testamentary capacity, and that the Will was procured through undue influence and fraud;

(5) to determine that Lloyd E. Holt died intestate; [and]

(6) to declare Veronice A. Holt, Valerie Holt and Patricia Gardner, the daughters of Lloyd E. Holt, the lawful heirs of the estate of Lloyd E. Holt, each entitled to a one third share of the estate of Lloyd E. Holt.

Petitioner Veronice A. Holt moved for Summary Judgment, pleading the Michigan adjudications of insanity and the guardianship of Lloyd Holt as a mentally incompetent person as a bar to Lloyd Holt having testamentary capacity. The motion was denied without explanation, opinion, or findings of facts and conclusions of law.

The matter proceeded to trial before Charles O. Mitchell, Circuit Judge. The trial was held in chambers in secrecy over objection of Petitioner. At the trial, the parties stipulated to the authenticity of certified copies of records from the Michigan Probate Proceedings and the

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[2] 731.201(19) "Incompetent means a minor or a person adjudicated incompetent."

Jacksonville Clinic records for the period in which Lloyd Holt was under their supervision.[3] Although the authenticity of the Michigan adjudication of insanity was conceded and two psychiatrist (including one called by Respondent Arvie J. Lee) testified that Lloyd Holt was in fact suffering from the mental illness, schizophrenia, at the time the will was made, throughout the trial and appeal Arvie J. Lee insisted that Lloyd Holt had merely had a nervous breakdown and was not insane. It was only in his response to the Petition for Writ of

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[3] These records included:

a. Michigan Probate Records for Lloyd Holt
   i. The Physician's Certification dated January 18, 1949;
   ii. The Application for Admission to Hospital for Alleged Insane Person, as endorsed on March 30, 1949 by Judge Sexton;
   iii. The Certificate of Eugene Quigly, M.D., certifying Lloyd Holt actually insane;
   iv. The Certificate of Joseph L. Kubanek, M.D. certifying Lloyd Holt actually insane;
   v. Temporary Detention Order Scheduling Hearing to Show Cause.
   vi. The Director's Certification - Temporary Detention Order
   vii. Petition for Appointment of Guardian of Alleged Mentally Incompetent Person Veterans Act
   viii. Letters of Guardianship.

b. Lloyd Holt's C-File; and

C. The Jacksonville Clinic Outpatient Records

Mandamus that Arvie Lee finally admitted that, "in 1949, Lloyd E. Holt was involuntarily committed to a state psychiatric hospital in Detroit, Michigan, because of severe schizophrenia."

D. The Opinions Below

On September 7, 1995, Judge Charles O. Mitchell, entered a Final Order (App.A) without finding of facts.[4] He made no reference to the Michigan adjudication of insanity or the continuing guardianship. The sole statement of the Duval Probate Court decision with respect to Lloyd Holt's competency was his conclusory legal finding.

> "As to the issue of Decedent's testamentary capacity the Court finds that Respondent/Personal Representative has established by a preponderance of the evidence that, at the time he executed the Will on January 17, 1989, the Decedent possessed testamentary capacity."

Petitioner Veronice A. Holt, appealed to the First District Court of Appeal, asserting again the Michigan adjudication of incompetency as controlling on the question of Lloyd Holt's testamentary capacity. Petitioner also appealed the denial of summary judgment and the denial of her right to a public trial.

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[4] Judge Mitchell instructed the parties not to submit findings of fact and conclusions of law.

Respondent Arvie Lee, despite having stipulated to the authenticity of the Michigan adjudication in the Court below, argued that Lloyd Holt was neither adjudicated insane nor under guardianship. Petitioner responded by setting forth the laws of the State of Michigan at the time of the involuntary commitment and the Michigan statutory and case law establishing the validity of the insanity adjudication and guardianship.

On September 12, 1996, the First District Court of Appeal issued a *per curiam* affirmance of the trial court's ruling. Petitioner timely filed a MOTION FOR RECONSIDERATION, REHEARING, AND/OR CLARIFICATION AND FOR REHEARING *EN BANC* stating that "the lower Court and now a panel of this Court, have issued opinions in which there is absolutely no reference, mention or acknowledgement of the fact [] that prior to making the will Lloyd Holt was adjudicated insane and not restored to sanity..."

On October 24, 1996, the First District Court of Appeal by Order of the Court denied the motion for rehearing (App.C). Petitioner Veronice A. Holt, timely filed a Petition for Review with the Supreme Court of Florida which dismissed the Petition for Review for lack of jurisdiction.[5]

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[5] Where the District Court of Appeal in Florida issues a *per curiam* denial, the Supreme Court of Florida has held that it is without jurisdiction to grant discretionary review.

(continued...)

On December 3, 1996, Petitioner Veronice A. Holt filed a Petition for Writ of Mandamus[6] with the Supreme Court of Florida asserting that (1) the final order finding Lloyd Holt competent to execute a will was a clear and certain violation[7] of Florida Statues § 394.4672 and § 744.103, and that (2) the failure to give effect to the prior Michigan adjudications of insanity and guardianship is a clear and certain violation of the Full

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[5](...continued)
Thus the District Court of Appeal is the highest court that can issue a decision as required by 28 U.S.C. 1257. ***Nash v. Florida Industrial Commission.*** 389 U.S. 235 (1967)

[6] Although the Supreme Court of Florida is without jurisdiction to grant discretionary review of a *per curiam* affirmance, it does have discretionary original jurisdiction to issue extraordinary writs to review decisions of lower courts. Gerald Cogan and Robert Craig Waters, ***The Operation of the Florida Supreme Court,*** 18 Nova.L.Rev.1151 (1994) Reprinted by the Supreme Court of Florida. 55-58.

[7] Under Florida law, "mandamus is an appropriate remedy where the petitioner has a clear legal right to the performance of a particular duty and has no other legal method of obtaining relief. ***Pino v. District Court of Appeal for the Third District,*** 604 S.2d 1233 (Fla. 1992). "Florida law is well settled that mandamus may be sued only to enforce a right that is both clear and certain." ***Florida League of Cities v. Smith,*** 607 So.2d 397 (1992) See also ***Caldwell v. Estate of McDowell,*** 507 So.2d 607 (Fla. 1987); ***Holland v. Wainwright,*** 499 So.2d 21 (Fla. 1st DCA, 1986);***Heath v. Becktell,*** 327 So.2d 3 (Fla.1976).

Faith and Credit Clause of the United States Constitution. Finally, Petitioner Veronice A. Holt asserted that she was a resident of the District of Columbia and that Judge Mitchell's final order violated the Privileges and Immunities Clause of Article IV Section 2 of the United States Constitution. Respondent Arvie Lee moved to dismiss the petition for failure to state a claim upon which relief can be granted.

By Orders dated December 30, 1996 and February 19, 1997, respectively (App. E and F), the Supreme Court of Florida denied the Petition for Writ of Mandamus without opinion.

REASONS FOR GRANTING THE PETITION

1. *Full Faith and Credit.* This Court is the final arbiter of questions arising under the Full Faith and Credit Clause. ***Morris v. Jones,*** 329 U.S. 545 (1946); ***Williams v. North Carolina,*** 317 U.S. 287 (1942) When a state court refuses to grant full faith and credit to the judgments of its sister state, an asserted federal right is denied and the sufficiency of the grounds of denial are for this court to decide." ***Titus v. Wallick,*** 306 U.S. 282, 291 (1939). Responsibility for resolution of federal constitutional issues rest with this court. ***Sutton v. Leib,*** 342 U.S. 402 (1952); ***Barber v. Barber,*** 323 U.S. 77 (1944).

From its earliest days, this Court has insisted upon the near absoluteness of the Full Faith and Credit Clause in requiring that that which has been adjudicated in one state is *res judicata* to the same extent in every other state.

Magnolia Petroleum Co. v. Hunt, 320 U.S. 430 (1943). "Full faith and credit thus generally requires every state to give to a judgement at least the res judicata effect which the judgment be accorded in the state which rendered it." *Durfee v. Duke,* 375 U.S. 106 (1963); *North Carolina v. Williams,* 325 U.S. 226 (1945); *Order of Travelers v. Wolf,* 331 U.S. 586 (1947). Even if a state improperly renders a judgment, the failure to appeal and provide a reviewing court an opportunity to correct the error, causes the judgement to pass "into verity, become final, and [] not [become] subject to collateral attack. *Aldrich v. Aldrich,* 378 U.S. 540 (1963).

Likewise, in enacting 28 U.S.C. § 1738 Congress intended the Full Faith and Credit Clause to mean "full" not "some" credit. *Davis v. Davis,* 305 U.S. 32 (1938).

Exceptions to the full faith and credit clause are few and far between. ***Williams, supra, 317 U.S. at page 294-295***[8] In this case, the record of the prior

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[8] The State of Florida cannot be motivated by considerations of policy. As Petitioner has consistently asserted in the proceedings below, there are no cases in Florida finding that a person adjudicated insane and under guardianship is competent to execute a will. Further, there is a logical explanation for the absence of such cases. In the State of Florida, "...where a person is adjudged to be insane, there exists a presumption that insanity continues..." *Alexander v. Callahan's Estate,* 132 So.2d 42 (Fla. 3d DCA

(continued...)

adjudications has been stipulated to by the parties and there is no applicable exception urged by any party. The obligation of the states to extend full faith and credit to their sister states includes judicial proceedings. ***Sovereign v. Bolin,*** 305 U.S. 66 (1939). Indeed, in this case, the legislature of the State of Florida in enacting § 394.4672 has expressly recognized its obligation to give full faith and credit to the particular class of judgments at issue here. The Courts of the State of Florida have simply chosen to ignore the existence and validity of a judgment of another state, Michigan. On the motion for summary judgment where the only evidence before the Court related to Lloyd Holt's competency was the Michigan adjudications of insanity and guardianship, the Court denied the motion without opinion thus expressly failing to give effect to the Michigan adjudications. Likewise, when squarely faced with the full faith and credit issue in the Petition for Writ of Mandamus, the Florida Supreme Court denied the request without explanation. The Courts of the State of Florida have now rendered four opinions in this matter without ever acknowledging either the existence of the Michigan adjudications of insanity and guardianship or their obligation to give those judgments full faith and credit. This is an error that only this Court can correct.

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[8](...continued)
1961) relying upon ***Horace v. Culver,*** 111 So.2d 670 (Fla.1959).

2. *Privileges and Immunities.* The primary purpose of the Privileges and Immunities Clause of Article IV of the Constitution is to declare to the states that whatever rights a state grants to its citizens, its must grant the same rights to the citizens of other states who come into its jurisdiction. ***Toomer v. Witsell,*** 334 U.S. 385 (1948);[9] ***Building Trades & Construction Trades Counsel of Camden County v. Mayor and City Council of Camden,*** 465 U.S. 208 (1984).

The right of a citizen in one state to inherit property in another state is protected by the Privileges and Immunities Clause of Article IV. ***Magill v. Brown,*** 16 Fed. Cas. 408 (1883). Petitioner Veronice A. Holt is a citizen of the District of Columbia.[10] In the first instance, although the right to a public trial is guaranteed by the State of Florida, ***Barron v. Florida Freedom Newspapers,*** 531 So.2d 113, 116 (Fla. 1988)[11], the probate court judge insisted on holding this trial in the

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[9] Relying upon ***Paul v. Virginia,*** 8 Wall 168, 180-81 (1868); ***Travis v. Yale & Towne Mfg. Co.,*** 252 U.S. 60, 78 (1920)

[10] Valerie Holt and Patricia Holt Gardner are residents of the District of Columbia and the State of Michigan, respectively.

[11] "[W]e hold that both civil and criminal court proceedings in Florida are public events and adhere to the well established common law right to access to court proceedings."

secrecy of his chambers. He then refused to apply the laws of his own state, Florida Statues § 394.4672 to Petitioner, a non-resident.

I. THE FAILURE OF THE COURTS OF THE STATE OF FLORIDA TO GIVE THE MICHIGAN ADJUDICATIONS OF INSANITY AND GUARDIANSHIP THE SAME EFFECT THAT THEY WOULD HAVE IN MICHIGAN IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION

Where a state court has jurisdiction over the parties and the subject matter, the judgment of that state court controls in other states to the same extent as in the state that rendered the decision. Under Michigan law, an adjudication of mental incompetency and appointment of a guardian creates a conclusive presumption of incompetency. ***Acacia Mut. Life Ins. Co. v. Jago,*** 273 N.W. 599 (Mich. 1937).[12] More recently, in ***May v.***

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[12] "After a careful examination of the authorities *** we conclude that the correct rule is **that while an insane or incompetent person is under actual and subsisting guardianship of estate, he is conclusively presumed incompetent to make a valid contract, notwithstanding it was made during a lucid interval.** He is a ward of the probate court under the laws of this state. The guardian, an officer of the court has the sole legal right to sell,

(continued...)

Leneair, 297 N.W. 2D 599 (Mich. App. 1980) the Michigan Court relying upon ***Acacia Mutual Life*** held that under Michigan Law a person adjudicated mentally incompetent cannot enter a valid marriage.

There is in the record no basis stated or asserted for a collateral attack on the Michigan adjudication of insanity or on the appointment of a guardian for a mentally incompetent person. Respondent now admits to the fact of the involuntary commitment. The existence of the guardianship at the time that the will was made is a part of the stipulated record. Indeed, Arvie Lee, a stranger to the adjudications of insanity and guardianship, has not made any showing that he had standing to collaterally attack either adjudication in the Michigan courts. To the extent that he lacked standing to collaterally attack the adjudication in the Michigan courts, he was equally without standing to make such a collateral attack in the State of Florida. ***Johnson v. Muelberger,*** 340 U.S. 581 (1951). Thus the only issue for the Court in Florida was to determine the effect to be given the Michigan adjudication and not to reweigh and redecide the issue of competency.

II. THE COURTS OF THE STATE OF FLORIDA HAVE DENIED TO THE PETITIONER AS

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[12](...continued)
assign, or mortgage the property belonging to his ward's estate, and any such transfer without the knowledge and consent of the guardian is void."

GUARANTEED BY ARTICLE IV THE SAME PRIVILEGES AND IMMUNITIES AS IT GRANTS TO THE CITIZENS OF FLORIDA IN PROCEEDINGS IN ITS COURTS

This Court's jurisprudence concerning states discriminating against residents of other states "reveals a powerful, inchoate aversion to state parochialism or protectionism." ***Note: State Parochialism, and the Right to Travel and the Privileges and Immunities Clause of Article IV,*** 41 Stanford Law Rev. 1557 (1989). State parochialism and protectionism are all exactly what are at work here.[13] Faced with a situation in which the law makes clear the right of out-of-state presumptive heirs to inherit their father's estate, the State of Florida has simply refused to acknowledge the existence of the prior adjudications by her sister state, Michigan, and thereafter refused to give those adjudications the full faith and credit to which they are entitled.

This Court has traditionally applied the Privileges and Immunities Clause to state legislation. The Clause,

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[13] The ~~Flori~~da probate system which is a self-administering system that fosters close relationship between local lawyers and elected judges is perhaps tailor made for parochialism and protectionism. In 1995, Jeffrey Good, a reporter for the St. Petersberg Times won a Pulitzer Prize for his editorial investigation "Final Indignities" which detailed abuses, including lawyers looting estates with out-of-state beneficiaries, in the Florida probate courts.

however if it is to have meaning must equally apply to state judicial proceedings. A state court cannot be empowered under the Constitution to treat residents of other states differently than the treatment it affords its own citizen. Indeed, the right to equal access to the courts of another state is probably one of the most common rights in our mobile society and economy which a citizen of one state is likely to seek in another state.

CONCLUSION

Finally, it should be noted that the failure of the Courts of the State of Florida to give full faith and credit to the Michigan adjudications of insanity and guardianship and to grant the Petitioner the same privileges and immunities as its grants to the citizens of its State, clearly frustrates Congressional intent to limit the persons who may inherit these funds. The Courts of the State of Florida in failing to give full faith and credit to the Michigan adjudications of insanity and guardianship has thereby garnered for one of its domiciliaries a substantial economic benefit in contravention of the United States Constitution and the intent of Congress. For all the reasons stated herein, Petitioner prays this Court grant her petition for writ of certiorari.

April 26, 1997

Respectfully submitted,

/s/ Veronice A. Holt
VERONICE A. HOLT
Counsel of Record
Attorney for Petitioner
Suite W919
3003 Van Ness NW
Washington, D.C. 20001
(202) 244-2659

APPENDIX A

IN THE CIRCUIT COURT, FOURTH JUDICIAL DISTRICT, IN AND FOR DUVAL COUNTY, FLORIDA

PROBATE DIVISION

FILE NO.: 91-01234-CP
DIVISION: CV-D

IN RE: ESTATE OF LLOYD E. HOLT

Deceased,

VERONICE A. HOLT,

Petitioner,

v.

ARVIE J. LEE

Personal Representative/
Respondent,

FINAL JUDGMENT FOR RESPONDENT/PERSONAL REPRESENTATIVE

This came before the Court for trial without a jury on the Petition for Revocation of Probate, Removal of Personal Representative and Determination of Invalidity of Will

filed by Petitioner Veronice A. Holt and joined in by Paricia Gardner and Valerie Holt. The issues tried by the Court, as stipulated to by the parties in the Pretrial Stipulation filed in this cause on June 23, 1995, were: (1) whether the will dated January 17, 1989, and admitted to probate on August 14, 1991 (the 'Will") was executed by Lloyd E. Holt (the "Decedent"): (2) whether the Decedent possessed testamentary capacity to execute the Will; (3) whether the Will was the product of undue influence exercised over Decedent by Respondent Arvie J. Lee; and (4) whether the funds held by First of America, the court-appointed guardian for Decedent during his lifetime, constitute "personal funds of patients" as that terms (*sic*) is used in 38 U.S.C. Section 5502(d) and thus not part of Decedent's probate estate subject to administration and devise by will. As to each of the foregoing issues, the Court received and considered the evidence adduced by the respective parties at the trial of this cause which was held from June 28, 1995, through July 6, 1995.

As to the first issue, the Court finds, based upon uncontradicted evidence adduced by Respondent/Personal Representative, that the Will dated January 17, 1989, and admitted to probate this case on August 14, 1991, was executed by Decedent as his Last Will and Testament and said Will was executed with the formalities required by Florida law.

As to the issue of decedent's testamentary capacity, the Court finds that Respondent/Personal Representative has established by a preponderance of the evidence that, at the time he executed the Will on January 17, 1989, the Decedent possessed testamentary capacity.

As to the third issue, the Court finds by a preponderance of the evidence that Decedent's Will dated January 17, 1989 was not the product of undue influence exercised over the Decedent by Respondent Arvie J. Lee or any other person.

Finally, as to the fourth issue, the Court finds that the assets held by First of America, under a guardianship established in Michigan for the benefit of Decedent during his lifetime, do not constitute "personal funds of patients" as that term is used in 38 U.S.C. Section 5502(d). The term "personal funds of patients" for purposes of 38 U.S.C. Section 3502(d), does not include amounts paid to a court-appointed fiduciary such as First of America. The Court finds that the funds held by First of America are funds that were properly paid to and held by First of America in its capacity as Decedent's court-appointed guardian. Thus under 38 U.S.C. Section 5502 and the relevant provisions of Title 38, Code of Federal Regulations, the funds held by first of American (*sic*) are not "personal funds of patients" but are assets subject to administration.

In light of the foregoing findings, Petitioner Veronice A. Holt, Patricia Gardner and Valerie Holt are not entitled to an account by Respondent of his administration of the Decedent's estate. Similarly, their request that Respondent be removed as Personal Representative should be denied since, as a result of the Court's ruling herein, they have no standing to contest Respondent's administration of the estate.

Therefore, its is now ORDERED AND ADJUDGED:

1. The Petition for Revocation of Probate, Removal of Personal Representative and Determination of Invalidity of

Will is denied and final judgment in favor of Respondent/Personal Representative on said Petition for Revocation of Probate, Removal of Personal Representative and Determination of Will is hereby entered.

2. The Will executed by decedent o January 17, 1989, and previously admitted to probate herein on August 14, 1991, was executed by decedent as his Last Will and Testament with the formalities required by Florida law.

3. At the time he executed the Will dated January 17, 1989, Decedent possessed testamentary capacity and such Will is not invalid on the basis of lack of testamentary capacity.

4. Decedent's Will dated January 17, 1989, was not the product of undue influence exercised over Decedent by Respondent Arvie J. Lee or any other person.

5. The funds held by First of America, the court-appointed guardian for Decedent during his lifetime, do not constitute "personal funds of patients" as that term is used in 38 U.S.C. Section 5502(d). Rather, they constitute funds paid by the Veterans Administration to a court-appointed fiduciary and are assets subject to administration by this Court and devise under Decedent's Will.

DONE AND ORDERED at Jacksonville, Duval County, Florida, this 7th day of September, 1995.

/s/ Charles O. Mitchell
Circuit Judge

Copies to:

Veronice A. Holt, Esq.
Valerie Holt
Patricia Gardner
John E. Lawlor, III, Esq.
Rebecca L. Berg, Esq.

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